

Before the
Federal Communications Commission
Washington, D.C. 20554

In the matter of
Verizon Wireless Messaging Services, Inc.
Request for Limited Waiver of
Sections 22.947 and 22.949 of
The Commission's Rules

ORDER

Adopted: September 19, 2002

Released: September 20, 2002

By the Chief, Policy and Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. On January 29, 2002, Verizon Wireless Messaging Services, LLC (Verizon Wireless) filed the above-captioned request for a limited waiver of sections 22.947 and 22.949 of the Commission's rules (Waiver Request) to preclude the filing of Phase I or Phase II cellular unserved area applications that propose coverage in its existing cellular markets within the National Radio Quiet Zone (Quiet Zone). For the reasons discussed below, we grant Verizon Wireless's Waiver Request.

II. BACKGROUND

2. The Quiet Zone, which encompasses an area of approximately 13,000 square miles, was created to minimize possible harmful interference to the National Radio Astronomy Observatory (NRAO), located at Green Bank, West Virginia, and the Naval Radio Research Observatory (NRRO), located at Sugar Grove, West Virginia. Section 1.924(a) of the Commission's rules requires that the NRAO be notified of any proposed construction and operation of a new or modified station at a permanent fixed location within the Quiet Zone. If the NRAO objects to the proposed facility, on behalf of itself or the NRRO, the Commission, pursuant to section 1.924(a)(3) of its rules, "will, after consideration of the record, take whatever action is deemed appropriate."

3. Verizon Wireless, directly or through affiliates, holds licenses to offer cellular service in two Virginia Rural Service Areas (RSAs) and one Virginia Metropolitan Service Area (MSA) that include portions of the Quiet Zone. In its Waiver Request, Verizon Wireless states that because the Commission

1 47 C.F.R. §§ 22.947, 22.949.

2 Petition for Waiver of Verizon Wireless (Jan. 29, 2002).

3 47 C.F.R. § 1.924(a).

4 47 C.F.R. § 1.924(a)(3).

5 Specifically, Virginia RSA Limited Partnership is the B block cellular licensee in Virginia RSA 5 – Bath, call sign KNKN919. Southern & Central Wireless, LLC is the B block cellular licensee in Virginia RSA 6 – Highland, call (continued....)

typically defers to the NRAO's position, the standards employed by the NRAO to prevent or minimize possible harmful interference to the observatories have had the effect of absolutely barring placement of cellular facilities in portions of the Quiet Zone and of imposing severe restrictions on nearby facilities.⁶ As a result of these restrictions, Verizon argues that it has been precluded from extending coverage in portions of its MSA and RSAs.⁷

4. Verizon therefore seeks a limited waiver of Section 22.947 and 22.949 of the Commission's rules for the purpose of providing service within the Quiet Zone after expiration of the five-year build-out period in each market. Section 22.947 provides the initial licensee in each cellular market a five-year period during which the licensee has an exclusive right to expand its system within the market.⁸ Section 22.949 sets forth a two-part process, Phase I and Phase II, that allows individuals other than the original licensee to submit applications for licenses in areas in cellular markets that remain unserved after the five-year build-out period expires.⁹ Because its ability to expand coverage in the Quiet Zone has been restricted, Verizon Wireless contends that it should be given the first opportunity to expand its coverage if the Commission, in the future, relaxes its Quiet Zone restrictions or if new engineering techniques are developed that would permit a greater degree of Quiet Zone coverage.¹⁰ Verizon Wireless also asks that we preclude other individuals from submitting applications under the Commission's unserved area licensing rules once the five-year build-out period expires in each relevant market.¹¹

III. DISCUSSION

5. Because of the unique restrictions that limit construction in the Quiet Zone, we grant Verizon Wireless a limited waiver of the Commission's cellular five-year build-out and unserved area licensing rules. Section 1.925 of the Commission's rules provides that a waiver may be granted if it is shown that: (1) the underlying purpose of the rule would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (2) in view of unique or unusual factual circumstances of the instant case, application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.¹² We agree with Verizon Wireless that because of the unique circumstances encountered in the Quiet Zone, application of the cellular buildout and unserved area rules in this case would not serve the purposes of those rules and, therefore, would not be in the public interest. Verizon has shown that the Commission's rules governing operations in the Quiet Zone have prevented it from offering service to significant portions of its licensed area. Under these circumstances, we believe that enforcing the existing build-out and unserved area rules would serve no useful purpose and would potentially encourage the filing of speculative applications.

6. We note that our decision here is consistent with the *Quiet Zone Waiver Order*, which

(...continued from previous page)

sign KNKQ314. Cellco Partnership is the B block cellular licensee in the Roanoke, Virginia MSA, call sign KNKA441. Waiver Request at 2, n.3.

⁶ Waiver Request at 2.

⁷ Waiver Request at 2.

⁸ 47 C.F.R. § 22.947.

⁹ 47 C.F.R. § 22.949.

¹⁰ Waiver Request at 3.

¹¹ Waiver Request at 3.

¹² 47 C.F.R. § 1.925.

granted, on our own motion, a limited waiver of sections 22.947 and 22.949 of the Commission's rules to allow Easterbrooke Cellular Corporation and United States Cellular Corporation to continue to construct facilities within the Quiet Zone beyond the expiration of the five-year buildout period, and to preclude other parties from filing unserved area applications to serve areas within the Quiet Zone on the channel blocks and in the RSAs covered by their licenses.¹³

7. We therefore grant Verizon Wireless a limited waiver of sections 22.947 and 22.949 of the Commission's rules. Specifically, we waive section 22.947 to permit Verizon Wireless to continue to construct facilities within the Quiet Zone beyond the expiration of the five-year buildout period for call signs KNKN919, KNKQ314, and KNKA441, subject to compliance with section 1.924(a) and other relevant provisions of the Commission's rules. We also waive section 22.949 of the Commission's rules to preclude other parties from filing unserved area applications to serve areas within the Quiet Zone on the channel blocks and in the two RSAs and one MSA covered by these licenses.

8. In granting this waiver, we note that potential circumstances could cause us to reevaluate the waiver granted here. For example, if the Commission did modify its Quiet Zone rules, or if technological advances were to make construction in the Quiet Zone feasible, we expect that Verizon Wireless would take the necessary steps to expand its coverage. If Verizon Wireless did not do so after a reasonable opportunity, we would consider reinstating unserved area licensing procedures to enable other parties to enter the market. Thus, this waiver will remain in effect to permit Verizon Wireless to construct and bring into operation new facilities until the Commission or a Commission official on proper exercise of delegated authority terminates the waiver.

IV. ORDERING CLAUSE

9. Accordingly, IT IS ORDERED that, pursuant to sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§154(i), 303(r), and sections 0.331 and 1.925 of the Commission's rules, 47 C.F.R. §§ 0.331, 1.925, the request of Verizon Wireless Messaging Services, LLC for a waiver of sections 22.947 and 22.949 of the Commission's rules to the extent provided in this order IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Paul D'Ari
Chief, Policy and Rules Branch
Commercial Wireless Division
Wireless Telecommunications Bureau

¹³ In the Matter of Amendment of Section 22.949 of the Commission's Rules to Provide for a Moratorium on Acceptance of Unserved Area Cellular Applications Within the National Radio Quiet Zone, *Order*, 15 FCC Rcd 2728, 2730 ¶ 6 (WTB 2000) (*Quiet Zone Waiver Order*).